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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK BARRON,

Defendant and Appellant.

E055839

(Super.Ct.No. BLF003885)

OPINION

APPEAL from the Superior Court of Riverside County. David B. Downing and Jeffrey L. Gunther, Judges. Affirmed.

Zulu Ali, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Mark Barron, guilty of carrying a loaded firearm in a public place while he was prohibited from carrying a firearm. (Former Pen. Code, § 12031, subd. (a)(2)(D) [eff. Jan. 2000].) The trial court sentenced defendant to prison for a term of one year, four months. Defendant raises three issues on appeal. First, defendant contends there is not substantial evidence that he was in a public place while carrying a firearm. Second, defendant contends the trial court erred by denying his motion to suppress evidence discovered and statements made after an officer trapped defendant and conducted an unlawful search and seizure. Third, defendant asserts the trial court erred by denying his motion to suppress statements made after defendant's *Miranda*¹ rights were violated. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Riverside County Sheriff's Detective Miles was on patrol in Blythe on December 31, 2005. At approximately 1:20 a.m., Miles was driving along the bank of a canal. Blythe is primarily an agricultural community with paved roads that lead to canals. The canals are used to irrigate the agricultural crops. There are often roads along the banks of the canals, "which allow [people] access to other avenues around some of the[] fields so that [they] can safely get around some of the[] larger fields and onto where [they]'re going." Some of the farms in the area cover approximately a square mile in size. The canal roads are also used by farmers trying to access their different fields.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

The canal road Miles was traveling on December 31 was at the top of a canal bank, with drop-offs on either side. The road is unpaved and slightly wider than the width of a single car. Miles was unsure who owned the canal road, but he knew Palo Verde Irrigation District was responsible for maintaining the road. Miles was unsure if Palo Verde Irrigation is a public agency or private corporation. Miles explained that some canal banks are used as driveways, while others are used as “thoroughfares,” which is why he was unsure who owned the canal road and whether it was public or private property.

While Miles was driving along the single-lane canal road, the car defendant was traveling in approached from the opposite direction. Defendant was in a blue Ford Expedition, which he owned, but defendant was in the passenger seat and defendant’s coworker was driving. Miles’s patrol car and defendant’s car approached one another until they were blocking each other’s paths.

Miles approached the driver’s side of defendant’s vehicle. Miles and the men introduced themselves to one another; Miles asked the men how they were doing, where they were from, and where they were going. Defendant told Miles he had a gun in the car. Defendant explained he was not allowed to have a gun due to a restraining order. The conversation between the men lasted four or five minutes. Miles walked over to the passenger side of the car and retrieved the gun. The gun was located in “the map pocket of the door or that cubby space of a door.” The gun was registered to defendant. Miles had the men remain in the car. When a back-up deputy arrived, approximately eight to ten minutes after the initial contact, Miles handcuffed defendant and moved him to the

back of the patrol car. While being handcuffed, defendant told the back-up deputy, Deputy Michel, “that he knew he was not supposed to have the gun because he had a court order.” Defendant made the statement spontaneously—not in response to a question.

Michel had driven along the canal bank before, during patrols, although it was not a common path for him. Michel did not know who owned the canal bank. In Blythe, people often hunt and fish along the canal banks. In regard to the specific canal bank at issue in this case, Michel found it to be “hit and miss” as to whether he would see people stopped along the road to fish and hunt. It is “pretty easy” to enter and exit the canal road.

DISCUSSION

A. SUBSTANTIAL EVIDENCE

Defendant asserts the evidence supporting his conviction does not meet the substantial evidence standard because the evidence does not reflect he was in a public place at the time of his arrest. We disagree.

“When a defendant challenges the sufficiency of the evidence, “[t]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.]’ [Citations.]” (*People v. Clark* (2011) 52 Cal.4th 856, 942-943.) “We ““presume in support of the judgment the existence of

every fact the trier could reasonably deduce from the evidence.” [Citation.]’
[Citation.]” (*Id.* at p. 943.)

Private property, such as a private driveway, “may be a ‘public place if it is reasonably accessible to the public without a barrier.’” (*People v. Yarbrough* (2008) 169 Cal.App.4th 303, 319.)

The canal bank was accessible to defendant, Miles, farmers, and people who hunt and fish. Michel found the canal bank road to be “pretty easy” to enter and exit. Even if the road were privately owned, there is substantial evidence that it qualified as a public place, because various people were able to easily traverse the road. It does not appear that the road was blockaded from public use as evinced by Miles and defendant approaching one another from opposite directions on the road. The evidence reflects the road was open. Accordingly, we conclude substantial evidence supports the finding that defendant was in a public place.

Defendant contends there is not substantial evidence because the road had various “barriers,” such as the narrow width of the road and the drop-offs on both sides of the road. Defendant’s argument is not persuasive because it was possible to travel from one end of the road to the other without trouble, as evinced by defendant and Miles meeting along the road when traveling from opposite directions. Thus, the road was passable and accessible—there were no barriers.

B. MOTION TO SUPPRESS

1. *PROCEDURAL HISTORY*

Prior to trial, defendant moved to suppress the gun found in the car and the statement made by defendant. In the motion, defendant explained Miles heard a report about a fire burning in the area, and Miles drove toward the fire. Defendant asserted Miles saw the headlights of defendant's vehicle along the canal bank and "immediately turned around and drove toward[] the vehicle until the front of both vehicles stopped nose-to-nose." Defendant argued Miles conducted a traffic stop without reasonable suspicion and searched defendant's car without probable cause. Defendant asserted Miles stopped defendant's car based on a general suspicion or hunch that defendant might have been involved in the fire.

Additionally, defendant asserted his statement about the gun being in the car should be suppressed because it was made in violation of his *Miranda* rights. Defendant argued that Miles's stop of defendant's vehicle and questioning amounted to a custodial interrogation.

Miles testified at the motion hearing. Miles explained that he was on patrol, in uniform, when he learned about a structure fire and drove toward it. Miles turned onto the canal bank. Miles explained he chose to take the canal bank because it was the safest option given that the second option would have required crossing an unpaved road that was sometimes muddy due to irrigation. After traveling on the canal bank for approximately three-tenths of a mile, Miles saw the headlights of a car coming toward him.

Defendant's car continued travelling toward Miles's marked patrol car. The two cars stopped when they met facing one another on the road; the cars were approximately half a car length apart from one another. The patrol car's emergency lights were not activated; Miles did not try to make defendant's coworker stop the car. When the coworker did stop the car, Miles walked toward it. Miles believed it was suspicious that defendant and his coworker were traveling away from the fire in the middle of the night. Miles believed the two men could have been "leaving the scene of an arson fire." Miles's suspicion was based on (1) the structure fire, (2) the vehicle driving away from the area where the fire was located, and (3) "the early morning hours."

Miles asked the men if they were from Blythe and "where they were coming from." Miles also asked both men for identification. Defendant gave Miles his driver's license. While Miles was standing by the driver's door, defendant told Miles, "Deputy, I have a gun in this car. I have a gun near—down here near my—my hand." Defendant also explained that he was not allowed to have the gun due to a court order. Miles was able to see the gun in the door pocket when he opened the passenger door. Defendant was placed under arrest "[s]hortly after" Miles retrieved the gun. At the time of the arrest, Miles only suspected defendant of the crime of being in possession of a firearm.

The trial court found unusual circumstances existed due to (1) defendant traveling through a rural location, (2) the early morning hour, and (3) the fire burning. The trial court found Miles's questions were "normal" investigative questions; however, it was defendant who made "a very unusual statement." The court concluded an officer

would “investigate further” if a person confessed to possessing a gun he was not allowed to possess. The court found defendant’s statement was voluntary and Miles acted appropriately and “reasonably.” Accordingly, the trial court denied defendant’s motion to suppress.

2. *VEHICLE STOP*

Defendant asserts the trial court erred by denying his motion to suppress evidence because the vehicle stop was illegal. We disagree.

“‘In ruling on a motion to suppress, the trial court finds the historical facts, then determines whether the applicable rule of law has been violated.’ [Citation.] When we review the trial court’s resolution of the motion to suppress, we ‘defer to the trial court’s factual findings, express or implied, where supported by substantial evidence.’ [Citation.] However, we exercise our independent judgment in determining whether the search or seizure was reasonable under the Fourth Amendment. [Citation.]” (*People v. Dotson* (2009) 179 Cal.App.4th 1045, 1048-1049.)

“It is well established that a brief stop of a vehicle to pose a question to an occupant constitutes a ‘seizure’ for purposes of the Fourth Amendment. [Citation.] [¶] However, because such a brief stop intrudes on a person’s privacy to a lesser extent than does an arrest or other extended detention, it is equally well established that the ordinary probable cause and warrant requirements of the Fourth Amendment do not apply to brief vehicle stops. [Citation.] Instead, such investigatory stops are akin to the on-the-street encounters addressed in *Terry v. Ohio* (1968) 392 U.S. 1 88 ‘[A]ccordingly, the same objective standard applies: a police officer may conduct an investigatory

traffic stop if the officer has “reasonable suspicion” that a particular person “has committed, is committing, or is about to commit a crime.” [Citation.]” (*People v. Bennett* (2011) 197 Cal.App.4th 907, 912-913.)

An officer’s reasonable suspicion is evaluated by considering the totality of the circumstances to determine whether the officer had a ““particularized and objective basis” for suspecting legal wrongdoing.” (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1058.) Although a hunch is not sufficient to justify a stop, reasonable suspicion is a lesser standard than probable cause and ““it falls considerably short of satisfying a preponderance of the evidence standard. [Citation.]’ [Citation.]” (*Ibid.*)

The evidence reflects defendant and his coworker were driving along a rural road, a canal bank, in the middle of night. The men were coming from an area where a structure fire had recently begun. Given the remoteness of the location through which defendant was travelling, the time of night, and the fire burning, Miles could reasonably suspect something criminal was afoot. The circumstances, when taken together, appear strange because it is unclear what reason, other than criminal activity connected to the fire, the men would have for being in such a rural area in the middle of the night. These circumstances would cause a reasonable law enforcement officer to want to question defendant and his coworker. Thus, the stop was proper.

Defendant asserts Miles was acting only on a hunch because there was nothing indicating the fire was the result of arson or that defendant and his coworker were somehow connected to the fire. We do not find the argument to be persuasive because it is the totality of the circumstances that must be considered. In this case, defendant

and his coworker were traveling along a canal—not near businesses or offices—in the middle of the night, and appeared to be leaving the area of the fire. Since there did not appear to be any reason for defendant to be in the area given its rural nature, and a fire had recently erupted in the location from which defendant was traveling, a law enforcement officer could have a reasonable particularized basis for suspecting criminal activity.

3. *MIRANDA RIGHTS*

Defendant contends the trial court erred by denying his motion to suppress evidence because defendant’s *Miranda* rights were violated. We disagree.

“In reviewing a trial court’s ruling on a motion to suppress evidence based upon a *Miranda* violation, “we accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.” [Citation.]’ [Citation.]” (*People v. Bejasa* (2012) 205 Cal.App.4th 26, 35.)

“*Miranda* advisements are only required when a person is subjected to custodial interrogation. [Citation.] A suspect is in custody when a reasonable person in the suspect’s position would feel that his ‘freedom of action is curtailed to a “degree associated with formal arrest.” [Citation.]’ [Citation.]” (*People v. Bejasa, supra*, 205 Cal.App.4th at p. 35.) California courts have identified a number of facts relevant to determining whether a person was in custody. “While no one factor is conclusive, relevant factors include: ‘(1) [W]hether the suspect has been formally arrested;

(2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.’ [Citations.]” (*Id.* at pp. 35-36.)

The record indicates defendant was not under arrest at the time he told Miles about the gun in the car. Miles only asked defendant and his coworker a few questions at the time defendant volunteered his statement about the gun, which indicates the detention was not lengthy. While defendant was stopped in a rural and perhaps isolated area, defendant remained in his car while speaking to Miles, so he was not in a custodial environment. At the time defendant made his statement about the gun, the people present were: one officer, defendant, and defendant’s coworker, so the non-law enforcement people outnumbered the law enforcement officer two to one. Miles’s demeanor during the detention appeared to be formal but not aggressive; Miles described the interaction as asking the men if they were from the area, asking for their identification cards, and engaging in “small talk” while the men retrieved their identification cards.

There is nothing in the interaction that indicates defendant was in custody at the time he volunteered his statement about the gun, because the interaction was brief, not in a custodial environment, the officer’s demeanor was not aggressive, and the non-law enforcement people outnumbered the officer. Since the factors support a conclusion that defendant was not in custody, the trial court did not err by denying defendant’s motion to suppress.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.